

ORDINANCE NO. 07-018

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA GRANTING A REVOCABLE USE PERMIT TO BEN OCNER, FOR FIVE YEARS, COMMENCING ON MARCH 1, 2007 AND ENDING ON FEBRUARY 28, 2012, WITH TWO SUCCESSIVE FIVE-YEAR RENEWALS, FOR THE ANNUAL SUM OF \$10.00, COVERING A 14½- FOOT WIDE STRIP OF LAND LOCATED WITHIN THE CONFINES OF MILANDER PARK, ABUTTING THE WESTERN PROPERTY LINE OF 4640 PALM AVENUE, HIALEAH, FLORIDA, FOR A DISTANCE OF 150 FEET, AS DEPICTED ON THE SKETCH, WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Hialeah, Florida finds it in the best interest to renew the revocable use permit for an initial five-year term, with two successive renewals, to Ben Ocner, to allow the continued business use of a portion of an existing parking area, even though it encroaches onto land within Milander Park owned by the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The Mayor and the City Council of the City of Hialeah, Florida hereby grant a revocable use permit to Ben Ocner, for five years, commencing on March 1, 2007 and ending on February 28, 2012, with two successive five-year renewals, for the annual sum of \$10.00, covering a 14½-strip of land located within the confines of

Milander Park, abutting the western property line of 4640 Palm Avenue, Hialeah, Florida, as more particularly depicted on a sketch, which is attached hereto and made a part hereof as Exhibit "1".

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Any person, business, association, corporation, partnership or other legal entity who violates any of the provisions of this ordinance shall receive a civil penalty, up to a maximum of \$500.00, within the discretion of the court or administrative tribunal having jurisdiction. Each day that a violation continues shall constitute a separate violation.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

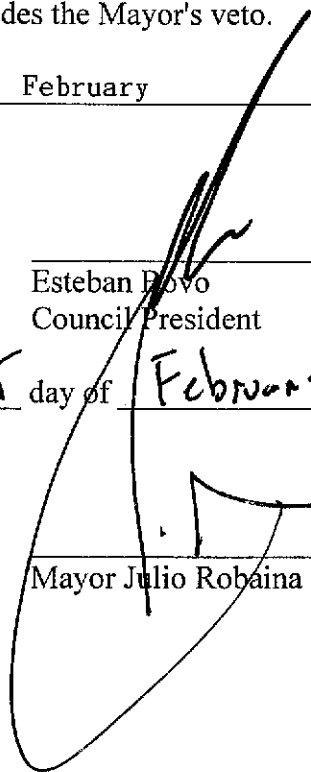
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's

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signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 13th day of February, 2007.


THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



Esteban Bovo
Council President

Attest:

Approved on this 15 day of February, 2007.

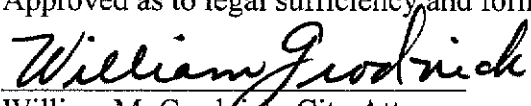


Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to legal sufficiency and form:



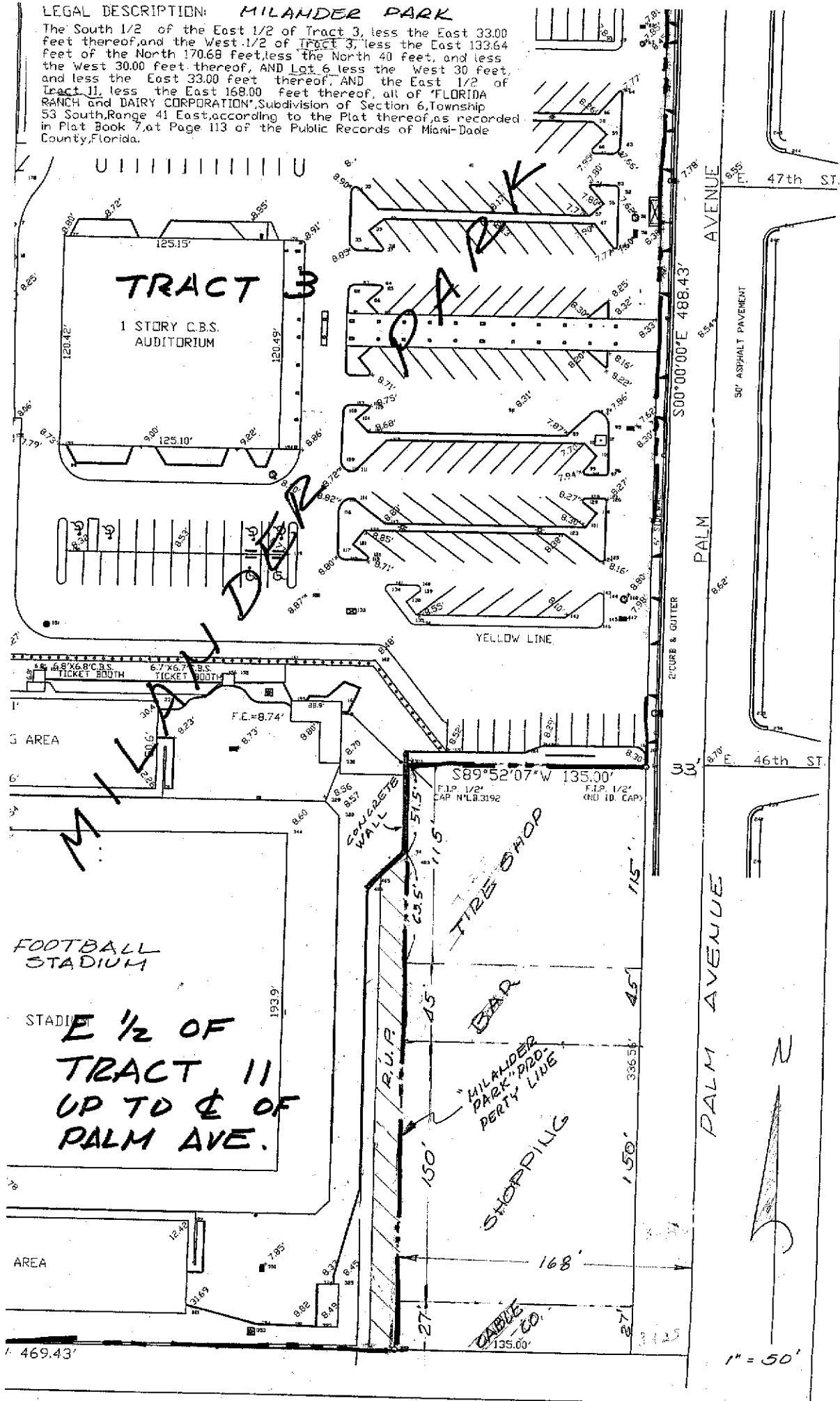
William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-0 vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Hernandez, Miel and Yedra voting "Yes" and Councilmember Gonzalez absent.

LEGAL DESCRIPTION: MILANDER PARK

The South 1/2 of the East 1/2 of Tract 3, less the East 33.00 feet thereof, and the West 1/2 of Tract 3, less the East 133.64 feet of the North 170.68 feet, less the North 40 feet, and less the West 30.00 feet thereof, AND Lot 6 less the West 30 feet, and less the East 33.00 feet thereof, AND the East 1/2 of Tract 11, less the East 168.00 feet thereof, all of FLORIDA RANCH and DAIRY CORPORATION, Subdivision of Section 6, Township 53 South, Range 41 East, according to the Plat thereof, as recorded in Plat Book 7, at Page 113 of the Public Records of Miami-Dade County, Florida.



HATCHED AREA REPRESENTS
THE REV. USE. PERMIT (D.I.D.)

Revocable Permit No.
Issued by the City of Hialeah
to Ben Ocner

REVOCABLE USE PERMIT

ARTICLE I

Description of Premises: The City of Hialeah ("City"), a Florida municipal corporation, 501 Palm Avenue, Hialeah, Florida 33010, hereby issues this Revocable Use Permit to Ben Ocner for the purpose and under the condition(s) hereinafter set forth, allowing the Permittee to use the Premises described as follows:

A portion of land of the East ½ of Tract 11, less the east 168 feet, of Section 6, Township 53 Range 41, according to the plat thereof, as recorded in Plat Book 7, Page 113, of the Public Records of Miami-Dade County, Florida, as more particularly described as follows:

A 14½-foot wide strip of land, parallel to the eastern property line, extending in a north-south direction, for a distance of 150 feet.

Also known as a parcel of land located at Milander Park abutting the western property line of 4640 Palm Avenue, Hialeah, Florida, as depicted on the sketch attached hereto and made a part hereof as Exhibit "1".

ARTICLE II

Time: This revocable use permit shall be valid for a period of five years, commencing on March 1, 2007 and terminating on February 28, 2012, unless otherwise revoked as provided below. This revocable use permit may be extended for two additional five-year periods upon request of the Permittee, submitted in writing at least 120 days prior to the termination date and approved by the Mayor of the City of Hialeah. This revocable use permit or any extensions and renewals thereof may, in addition to the termination which may result from or under the provisions Article XIX hereof, may be terminated by the

Mayor, with or without cause, by delivery of a written notice of revocation 180 days prior to revocation, but in no event prior to the expiration of the first 36 months.

ARTICLE III

Purpose: The Premises shall be used for the only to allow the use of the property for the location of required parking within the area that comprises this revocable use permit. The property owner, upon execution of the permit, shall pay \$3,500 to Florida Power & Light, for the relocation of two Florida Power & Light telephone polls, re-stripe the parking lot, remove all illegal signs on the property and construct a new CBS dumpster enclosure at the southwestern corner of the property acceptable to the City. Permittee shall not change or modify such use without the prior written consent of the Mayor.

ARTICLE IV

Fee: The Permittee shall pay a fee for the use of the premises, in the amount of Ten Dollars (\$10.00) annually, due and payable on the first day of each annual term as provided in Article II hereof.

ARTICLE V

Laws Applicable: The Permittee accepts this Revocable Use Permit recognizing that all federal, state and local laws, rules, and regulations, including but not limited to the Hialeah Charter and Code, ordinances, administrative orders, rules and regulations of the City of Hialeah and ordinances of Miami-Dade County, Florida, to the extent applicable, pertaining to the operation and maintenance of the Premises, and in particular, the building codes and zoning regulations, are made a part of this Revocable Use Permit, and the Permittee agrees to abide therewith as the same presently exist and as they may be amended.

ARTICLE VI

Utilities: Unless otherwise provided herein and to the extent that this article applies, the Permittee, at the Permittee's sole cost and expense, shall provide all utilities, including, but not limited to, electricity, water, gas, and sewage disposal. Trash and garbage removal shall be at the cost of the Permittee.

ARTICLE VII

Assignment or Transfer: Without the express consent of the Mayor, the Permittee cannot assign or transfer the privilege of entry and use granted unto them by this Revocable Use Permit; unless it is a successor in title to the property or properties of the Permittee.

ARTICLE VIII

Condition of Premises: The Permittee hereby accepts the Premises in its present condition and agrees to maintain it in the same condition, order and repair as it is in at this time, except for reasonable wear and tear.

ARTICLE IX

Alteration by Permittee: A. The Permittee may not make any alterations, additions, partitions or improvements in or to the Premises without the prior written consent of the City, and the design of such proposed alterations, additions, partitions or improvements in or to the Premises shall be first submitted to the City before or at the same time the City's approval is requested. All additions, partitions, or improvements shall become the property of the City and shall remain a part of the Premises at the expiration of this revocable use permit and any extensions or renewals hereof. The cost of renovation of the Premises as to alterations, additions, partitions or improvements shall be assumed by and is the financial responsibility of the Permittee.

B. The Permittee shall have the right to remove any movable personal property or fixtures that it places on the Premises. All alterations, additions, partitions or improvements must be in conformance with the provisions of Article V hereof. If any part of the Premises is in any way damaged by the removal of such items as stated in subsection A hereof, such damage shall be repaired by the Permittee at its sole cost and expense. If the Permittee fails to repair any damage caused to the Premises 10 days after receipt of written notice from the City directing the required repairs, City shall cause the Premises to be repaired at the sole cost and expense of the Permittee. Permittee shall pay City the full cost of such repairs within 10 days of receipt of an invoice indicating the cost of such required repairs. Failure to pay such invoice shall be sufficient cause to revoke the Revocable Use Permit as provided in Article XIX below. Notwithstanding the above, the City reserves the right to revoke this Revocable Use Permit for Permittee's failure to repair the Premises as directed without the necessity of the City repairing the Premises.

ARTICLE X

Maintenance: The Permittee agrees to maintain the Premises in good order and repair at all times and in a clean and sanitary condition during the period of this Revocable Use Permit or any extension or renewal.

ARTICLE XI

Right of Entry: The City, or any of its designated agents, representatives, or employees, shall have the right to examine and/or inspect the premises.

ARTICLE XII

Risk of Loss: The Permittee shall indemnify and save harmless the City against all risk of loss, injury or damage of any kind or nature whatsoever to property now or hereafter placed on or within said Premises, and all risk of loss, injury or damage of any

kind or nature whatsoever to the right-of-way or improvements made by the Permittee, or to any goods, chattels, merchandise or to any other property that may now or hereafter be placed upon said Premises, whether belonging to the Permittee or others, whether said loss, injury or damage results from fire, hurricane, rising water or from any other cause or other contingency, and whether the same be caused by the claimed negligence of the City or any of its employees, agents, or otherwise, and to keep harmless the City from all claims and suits growing out of any such loss, injury or damage.

ARTICLE XIII

Indemnification: The Permittee covenants and agrees that it shall indemnify, hold harmless, and defend the City from and against any and all claims, suits, actions, damages or causes of action arising during the period of this revocable use permit, and any extensions or renewals hereof, for any personal injury, loss of life or damage to property sustained in or on the Premises, by reason of or as a result of the Permittee's use of operations thereof, and from and against any orders, judgments, or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim and the investigation thereof.

ARTICLE XIV

Insurance: The Permittee shall maintain throughout the period of this revocable use permit, any and all extensions or renewals hereof, the following insurance:

A. General liability insurance on a comprehensive general liability coverage form or its equivalent, with a combined single limit of at least \$100,000.00 for bodily injury liability and property damage liability; products and completed operations coverage, personal injury, contractual liability, and premises medical payments coverage shall be included, and at least \$200,000 per occurrence, or such other amount approved

by the Risk Manager. The City shall be named as an additional insured on all insurance policies.

B. All Risk Property insurance coverage on a replacement cost basis for real and personal property located at or on the Premises unless said personal property is owned by the Permittee. The City shall be named as a named insured on such policy.

C. The policy or policies of insurance required shall be so written that the policy or policies may not be canceled or materially changed without 60 days advance written notice to the City, being delivered to the Risk Management Office, Hialeah City Hall, 501 Palm Avenue, 4th Floor, Hialeah, Florida, 33010-4789. A current Certificate of Insurance showing the required coverage shall be supplied to the Risk Management Office of the City. Insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength: The company must be rated no less than "A" as to management, and no less than Class "X" as to financial strength, in accordance with the latest edition of Best's Key Rating Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

ARTICLE XV

Peaceful Surrender: At the expiration of the revocable use permit period or any extensions or renewals hereof, upon notice of termination as provided by this revocable use permit, the Permittee shall, without demand, quietly and peaceably relinquish, surrender and deliver up possession of the Premises in as good condition as it is now, except for normal wear and tear such relinquishment, surrender and delivery also being required, upon demand of the City, pursuant to the provisions of Section 19 hereof, or as provided in Article II, or as may otherwise be directed by the City.

ARTICLE XVI

General Conditions: All notices or other communications which shall or may be given pursuant to this revocable use permit shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

City of Hialeah

Permittee: Ben Ocner

501 Palm Avenue
Hialeah, Florida 33010-4789

110 Island Drive
Key Biscayne, Florida 33149-2410

Attn: Mayor Julio Robaina

B. All consents or approvals of the City will be the consent or approval of the Mayor, unless specifically designated otherwise.

C. Title and paragraph headings are for convenient reference and are not a part of this revocable use permit.

D. In the event of conflict between the terms of this revocable use permit and any terms or conditions contained in any attached documents, the terms in this Revocable Use Permit shall prevail.

E. No waiver or breach of any provision of this revocable use permit shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

F. Should any provisions, paragraphs, sentences, words or phrases contained in this Revocable Use Permit be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, or the

City, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this revocable use permit shall remain unmodified and in full force and effect.

G. This revocable use permit shall be construed and enforced according to the laws of the State of Florida. The Permittee agrees to be subject to the jurisdiction (subject matter and in personam) of the courts of Dade County, Florida and amenable to process. Venue for any litigation arising out of or in connection with the Agreement shall be in Dade County Florida.

ARTICLE XVII

Advertising: The Permittee shall not allow any signs or advertising matter to be placed either in the interior or upon the exterior of the Premises or grounds without having first obtained the written approval of the City.

ARTICLE XVIII

Nondiscrimination: Permittee shall not discriminate against any persons on account of race, color, sex, religious creed, ancestry or national origin, in the use of the Premises and the improvements thereon.

ARTICLE XIX

Violations: If the Permittees in any manner violate the restrictions and conditions of this revocable use permit, then, and in that event, after 10 days written notice given to the Permittee by the City within which to cease such violation or to correct such deficiencies, and upon failure of the Permittee to so do after such written notice, this revocable use permit is hereby revoked automatically without the need for other or further action by the City.

ARTICLE XX

Taxes: During the period of this revocable use permit, the Permittee shall pay any and all taxes of whatever nature lawfully levied upon or assessed against the Premises.

ARTICLE XXI

Interest Conferred By Permit: The provisions of the revocable use permit do not constitute a lease and the rights of the Permittee hereunder are not those of a tenant. No leasehold interest in the Premises is conferred upon the Permittee under the provisions hereof.

ARTICLE XXII

Court Costs and Attorney's Fees: In the event that it becomes necessary for the City to institute legal proceedings to enforce the provisions of this Revocable Use Permit, Permittee agrees to pay the City's court costs and attorney's fees incurred at trial, administrative and appellate levels or proceedings.

IN WITNESS WHEREOF, the Permittee has caused this revocable use permit to be applied for by their respective duly authorized officers, on this _____ day of _____, 2007.

Signed, sealed and delivered
in the presence of:

City of Hialeah, Florida
501 Palm Avenue/P.O. Box 11-0040
Hialeah, Florida 33011-0040

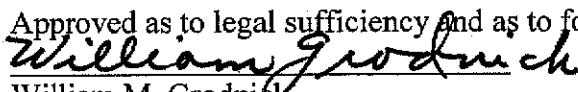
Attest:

Authorized signature on behalf of
the City of Hialeah, Florida

Rafael E. Granado
City Clerk

Mayor Julio Robaina Date

(SEAL)

Approved as to legal sufficiency and as to form:

William M. Grodnick
City Attorney

Permittee:

Ben Ocner
110 Island Drive
Key Biscayne, Florida 33149-2410

Authorized signature on behalf of:
Permittee

By: _____
Ben Ocner Date

Signed, sealed and delivered
in the presence thereof:

Witness
Typed/printed name: _____

Witness
Typed/printed name: _____

s:/wmg/contr/revocableusepermit4640palmavedoc